



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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Chief Counsel
Democratic Caucus
Pennsylvania House of Representatives
620 Main Capitol Building
P.O. Box 202228
Harrisburg, PA 17120-2248

OCT - 1 2015

RE: MUR 6886
The Commonwealth of Pennsylvania

Dear Ms. Winkleman:

On November 12, 2014, the Federal Election Commission notified the Honorable Frank Dermody, in his capacity as Democratic Leader of the House Bipartisan Management Committee of the Pennsylvania House of Representatives, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act") by the Commonwealth of Pennsylvania. On September 29, 2015, the Commission found, on the basis of the information in the complaint, and information provided by you and others, that there is no reason to believe the Commonwealth of Pennsylvania violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Dawn M. Odrowski, the attorney assigned to this matter at (202) 694-1650.

Sincerely,

Mark D. Shonkwiler
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Citizens for Boyle and Lindsay Angerholzer
in her official capacity as treasurer¹
Brendan Boyle
The Commonwealth of Pennsylvania

MUR: 6886

I. INTRODUCTION

This matter was generated by a complaint filed by Carson Dee Adcock alleging that Brendan Boyle, the Democratic candidate in the 2014 general election in Pennsylvania's 13th Congressional District and a then-sitting state legislator, and his principal campaign committee, Citizens for Boyle (the "Committee"), may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"), by using Boyle's state legislative e-mail list to send e-mails to voters concerning Boyle's congressional campaign.

As discussed below, the Committee's sworn Response identifies the source of the list it used as an open distribution list containing hundreds of e-mail addresses. Accordingly, the Commission finds no reason to believe that Respondents violated the Act.

II. ANALYSIS

The Complaint alleges that the Committee used Boyle's state legislative office e-mail list because two constituents who subscribed to Boyle's state legislative office e-mail list, but not to that of his congressional campaign, received campaign e-mails at a shared e-mail address.² The Complaint also states that the Committee's FEC reports do not disclose any payment for or the receipt of such a list. If the allegation is true, the Committee may have accepted and failed to

¹ Angerholzer was named the Committee's new treasurer in an amended Statement of Organization filed on March 6, 2015.

² Compl. at 1 and attached e-mails.

1 report an in-kind contribution.³ If the value of any such list exceeded the \$2,600 per election
2 contribution limit, the Commonwealth of Pennsylvania could be liable under the Act for making,
3 and Boyle and the Committee for accepting, an excessive in-kind contribution.⁴

4 In a sworn affidavit, the Committee's campaign manager states that the constituents'
5 shared e-mail address was obtained from a municipal environmental center e-mail announcing
6 upcoming programs and sent to an open distribution list containing 11 pages of e-mail
7 addresses.⁵ A campaign volunteer who received the e-mail forwarded it to the campaign
8 manager requesting that the e-mail addresses be added to the campaign's e-mail list.⁶ The
9 campaign manager later replied that the task was completed that day, a week before the
10 Committee e-mailed the first of its solicitations to the constituents.⁷ The affidavit attaches a
11 copy of the environmental center e-mail, which confirms it was sent to hundreds of e-mail
12 addresses, including those of the relevant constituents and of the Committee volunteer.⁸

³ A contribution includes "anything of value" made by any person for the purpose of influencing a federal election." 52 U.S.C. § 30101(8)(A)(i). "Anything of value" includes in-kind contributions, such as the provision of goods or services, like membership and mailing lists, without charge. 11 C.F.R. § 100.52(d). A candidate's authorized committee must disclose the total of all contributions received from persons and political committees and itemize any contributions exceeding \$200 in the election cycle. 52 U.S.C. § 30104(b).

⁴ See *id.* § 30116(a)(1)(A) (limiting contributions by any person to a candidate and his or her authorized political committee to \$2,600 per election in 2014); *id.* § 30116(f) (prohibiting a candidate or political committee from knowingly accepting a contribution in excess of the Act's limitations). The Commission considers a State government to be a person subject to the Act's contribution provisions. See, e.g., Advisory Op. 2000-05 at 2 n.3 (Oneida Nation of New York) (noting that although past advisory opinions have not addressed whether Indian tribes are a government entity, "the Commission has made clear that State governments and municipal corporations are persons under the Act and are subject to its contribution provisions."); Factual & Legal Analysis at 4-5, MUR 3986 (Commonwealth of Virginia) (concluding that the underpayment by Wilder for President Committee to the Commonwealth for the governor's use of state planes and telephones for his federal campaign constitutes an excessive in-kind contribution from the Commonwealth to the Committee).

⁵ Citizens for Boyle Resp., Affidavit of Scott Heppard ¶ 3..

⁶ *Id.* Heppard identifies the volunteer as Seth Kaplan.

⁷ *Id.* ¶¶ 3, 4.

⁸ *Id.*, Ex. A.

1 Counsel for the chair and ranking member of the Pennsylvania House of Representatives'
2 Bipartisan Management Committee each responded separately to the Complaint.⁹ Both
3 Responses deny knowledge of the alleged conduct and each discusses the steps taken by the
4 Commonwealth of Pennsylvania to prevent the use of state government resources for campaign
5 purposes.¹⁰

6 The Committee's sworn Response provides a sufficient basis to demonstrate that it used a
7 source other than Boyle's state legislative e-mail list to send the e-mails at issue in the
8 Complaint. Accordingly, the Commission finds no reason to believe that Citizens for Boyle and
9 Lindsay Angerholzer in her official capacity as treasurer failed to report an in-kind contribution
10 in violation of 52 U.S.C. § 30104(b). The Commission further finds no reason to believe
11 Brendan Boyle or the Commonwealth of Pennsylvania violated the Act.

⁹ See Smith Resp. (Nov. 24, 2014); Dermody Resp. (Dec. 2, 2014). The Complaints Examination and Legal Administration division ("CELA") initially notified the Secretary of the Commonwealth of Pennsylvania, Department of State, of the Complaint on October 24, 2014. Counsel for the Pennsylvania Department of State advised CELA that neither the Secretary of the Commonwealth nor the Department of State had jurisdiction over a state legislator's possible violation of the Act or the alleged improper use of state resources. CELA then notified Smith and Dermody in their capacities as chair and Democratic leader, respectively, of the House Bipartisan Management Committee.

¹⁰ See generally Smith Resp. at 1-4; Dermody Resp. at 2.